



Toledo Metropolitan Area Council of Governments

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Date: June 29, 2022
To: Jodie Opie
From: Toledo Metropolitan Area Council of Governments Wastewater Committee
Re: Euclid NPDES permit OH0031062 Public Hearing Comments

Dear Ms. Opie:

Members of the Toledo Metropolitan Area Council of Governments (TMACOG) Wastewater committee are writing regarding USEPA's objection to the City of Euclid, Ohio's NPDES permit OH0031062. As a Council of Governments, TMACOG's membership is composed of 5 counties, 14 cities, 28 villages, 14 townships, and 23 other governmental districts and educational institutions. TMACOG's members are the local governments responsible for providing safe and reliable drinking water for our region's 500,000 citizens and meeting Federal Clean Water Act requirements as they treat the wastewater produced by homes, businesses, and industries.

Local governments in the TMACOG region have invested billions of public dollars for capital improvements and long-term maintenance for water and wastewater infrastructure. For example, the City of Toledo is just finishing up a twenty-year, \$527M undertaking to improve the city's wastewater treatment system, eliminate all sanitary sewer discharges, and reduce combined sewer overflows by 80%. Smaller communities are also making large investments that are resulting in profound reductions to pollutants entering waterways. The City of Fremont (pop. 16,000) has spent over \$70 million to drastically reduce combined sewer overflows (CSOs) by 95% and to improve upon the treatment of nutrients with over a 40% reduction in Total Phosphorus discharged compared to before the upgrades.

Although Euclid is outside of TMACOG's membership area, our members are concerned that the outcomes of USEPA's objection will have impacts on each of them through the precedent this action will set. Below is a short summary of TMACOG members' concerns with USEPA's approach to enforcing new NPDES permit limits.

1. During the hearing, USEPA suggested that the agency would be willing to negotiate flexibility in Euclid's 0.007 mg/L limit in exchange for a Lake Erie-wide 0.5 mg/L phosphorus limit. The fact that USEPA originally suggested a 0.007 mg/L limit for Euclid, and then stated in the public hearing that it would accept a 0.5 mg/L basin-wide limit illustrates that USEPA's original objection is not based in science and calls to question the scientific rigor that USEPA applied to the negotiated limit of 0.5 mg/L. Region 5 simply appears to be using Euclid as a pawn to enforce a long-standing disagreement with Ohio EPA regarding a 0.5 mg/L limit for Lake Erie watershed POTWs. Any effluent limits that require large investments in public infrastructure must be based in sound science. As Ohio EPA's presentation illustrated, the basin-wide 0.5 mg/L is not; Euclid does not pass the Reasonable Potential test for Phosphorus.
2. OEPA's analyses have shown that Euclid does not cause or contribute to impairments from eutrophication or HABs in the Central Basin of Lake Erie. TMACOG supports OEPA's position that enforcing a 0.007 or 0.5 mg/L phosphorus limit on Euclid would yield little to no reductions on Lake Erie's phosphorus load. As stated during the June 8 hearing, Ohio EPA cannot legally implement permit limits outside of a TMDL when further reductions would have a negligible impact.
3. Tightening effluent limits on POTWs is not equitable where nonpoint source loads currently control the trophic status of Lake Erie. Forcing a blanket 0.5 mg/L limit on POTWs in the western Lake Erie basin POTWs, which only account for 7% of the nutrient load, will yield no substantial results in nutrient reduction but will place a tremendous burden for technology investments on ratepayers, many of whom already struggle to pay monthly utility bills. The following excerpt from Ohio EPA's testimony during the June 8 public hearing describes how the agency will work within the TMDL framework to address nutrient pollution in the western basin:

"Ohio does not plan to impose unattainable TP limits on our point sources through the Maumee Nutrient TMDL; Doing so would simply force the local governments and rate payers to take on the cost burden to in-turn, pay for nonpoint source reductions on their behalf. Through Ohio's H2Ohio Program and other state funded efforts, the state of Ohio is already paying the nonpoint source parties to take actions to reduce phosphorus loadings and do not need to put the local governments in the middle of these transactions or force our rate payers to bear this burden."

4. 90% of the WLEB phosphorus load originates from non-point sources. While USEPA has been focusing regulatory action on POTWs, significant portions of the animal agriculture industry have been allowed to grow unregulated, externalizing the water quality impacts of their businesses by avoiding regulations that should be in place to prevent animal manure from polluting our waterways. The USEPA has a responsibility to ensure that the regulatory programs exist to protect waterways from industrial pollution. This is the foundation upon which the USEPA was built and why the agency continues to exist today. Rather than futile attempts to address nutrient pollution through further POTW regulation, USEPA should focus staff time and resources on supporting Ohio in developing a meaningful plan to address nutrient pollution from animal operations and other agricultural sources by closing Clean Water Act loopholes that allow nutrients from these sources to enter our waterways untreated and unregulated.
5. USEPA's attempt to bypass notice and comment rulemaking in advance of implementing a basin- wide 0.5 mg/L P limit is unlawful and is contradictory to USEPA's own environmental justice and equity priorities. The general public and the utilities that have been entrusted with the responsibility of providing safe drinking water and treating wastewater must have an opportunity to be involved with any rulemaking that will require a substantial investment of public funds.

In response to USEPA's objection to Euclid's permit and in anticipation of future actions that may impact POTWs in the Western Basin, TMACOG requests that USEPA do the following –

- Withdraw USEPA's objection to Euclid's NPDES Permit
- Work with OEPA to determine if a TMDL for the Central Basin is necessary to address impairments. Revisit Euclid's permit when/if a TMDL for the Central Basin assigns scientifically supported wasteload allocations that prompt new effluent limits for Central Basin direct dischargers.
- Suspend any objections to permits for Western Basin watershed dischargers until after Ohio EPA has submitted a final draft of the Maumee Nutrient TMDL to USEPA for review.
- Evaluate whether the Maumee Nutrient TMDL will adequately meet nutrient reduction goals needed to address western basin impairments. In addition to examining wasteload allocations for point sources, USEPA should ensure that the State of Ohio's implementation plan has provided reasonable assurances that the proposed programs, policies, and funding are adequate to reduce phosphorus loading from non-point sources.

Thank you for this opportunity to provide comments. Please don't hesitate to contact Kari Gerwin at gerwin@tmacog.org if you have any questions.

Sincerely,



Doug Clark, City of Bowling Green
Wastewater Committee Chair



Jon Eckel, Retired City of Perrysburg
Water Quality Council Chair



Kari Gerwin, TMACOG
Vice President of Water Quality Planning